

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

|                                 |   |                  |
|---------------------------------|---|------------------|
| In the Matter of the Protest of | ) |                  |
|                                 | ) | DOCKET NO. 17385 |
| [Redacted],                     | ) |                  |
|                                 | ) | DECISION         |
| Petitioners.                    | ) |                  |
| _____                           | ) |                  |

On April 11, 2003, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing additional income tax and interest for the taxable years 1999 through 2001 in the total amount of \$11,922.

On June 2, 2003, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing but rather chose to rely upon the information provided in their protest letter. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) selected the taxpayers' 1999 through 2001 Idaho individual income tax returns for examination. Specifically, the Bureau was looking at [Redacted]'s status as a nonresident and the taxpayers' itemized deductions. The Bureau interviewed the taxpayers and reviewed their documentation. The Bureau gathered other information, researched the issues, and made its determination. The Bureau determined [Redacted] was domiciled in Idaho and that some of the claimed itemized deductions were not allowable. The Bureau sent the taxpayers a Notice of Deficiency Determination, which the taxpayers protested.

The taxpayers disagreed with the Bureau's determination that [Redacted] was domiciled in Idaho. They stated there were more factors that point to [Redacted] being domiciled in Washington than in Idaho. They also disagreed that the expenses for travel away from home

should be disallowed because [Redacted]'s employer was implementing a site in [Redacted], Utah that [Redacted] was allowed to service.

The Tax Commission reviewed the matter and sent the taxpayers a letter giving them the option of two methods for having the Notice of Deficiency Determination redetermined. The taxpayers chose not to have a hearing but wanted the Tax Commission to decide the matter based upon the information provided in their letter of protest. Therefore, the Tax Commission makes its decision to uphold the Bureau's determination on the basis of the following information.

### **BACKGROUND**

Prior to 1995, the taxpayers lived and worked in the Seattle area. They were apparently long-time residents of Washington. In 1995, [Redacted] was laid off from his employer, The [Redacted]. The taxpayers decided to move to [Redacted], Idaho to look for work and to help care for elderly parents. The taxpayers purchased a mobile home and began looking for work.

In 1996, [Redacted] was rehired by [Redacted]. He went back to [Redacted] and began planning the move of his family back to Washington. However, the taxpayers' parents still needed care and the move was put off. By the end of 1998, [Redacted] informed the taxpayers that the company would no longer pay to move the family back to Washington. By that time, [Redacted] had procured employment, the taxpayers had purchased a house in [Redacted], and their parents still needed assistance and care.

The taxpayers made the decision that [Redacted] and their three minor children would remain in Idaho. That decision was made on the premise that [Redacted] would retire within two or three years. However, with the downturn in the stock market, the taxpayers' investments took a big hit and they decided to postpone [Redacted]'s retirement indefinitely. [Redacted] continues to work for [Redacted] coming back to the family home every other weekend.

## **DOMICILE ISSUE**

One of the issues in this appeal is whether [Redacted] is a resident of the state of Idaho for Idaho income tax purposes. Idaho's income tax law states that a resident of this state is required to report and pay a tax on all his or her taxable income regardless of the source. Idaho Code section 63-3002. Idaho Code section 63-3013 defined the term "resident" as any individual who:

- (a) Is domiciled in the state of Idaho for the entire taxable year; or
- (b) Maintains a place of abode in this state for the entire taxable year and spends in the aggregate more than two hundred seventy (270) days of the taxable year in this state. Presence within the state for any part of a calendar day shall constitute a day spent in the state unless the individual can show that his presence in the state for that day was for a temporary or transitory purpose.

There is no dispute that [Redacted] did not spend more than 270 days in Idaho during the years in question. Therefore, the Tax Commission must look to see if [Redacted] was domiciled in Idaho during 1999 through 2001.

Domicile is defined in the Tax Commission's Administrative Rules as "the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time." Income Tax Administrative Rule 030.02, IDAPA 35.01.01.030.2 (2001). The essential distinction between residence and domicile is that domicile requires intent to remain at one place for an indeterminate or indefinite period. Reubelmann v. Reubelmann 38 Idaho 159, 164, 220 P 404, 405 (1923). Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 96 Idaho 48, 524 P.2d 176 (1973). A concurrence of three factors must occur to change an individual's domicile. The factors are (1) the intent to abandon the present domicile,

(2) the intent to acquire a new domicile, and (3) physical presence in the new domicile. Idaho Income Tax Administrative Rule 030.02.a (IDAPA 35.01.01.030.02.a). See also, Pratt v. State Tax Commission, 128 Idaho 883, 885 n.2, 920 P.2d 400, 402 n.2 (1996). Whether an individual has the specific intent to create a new domicile is evidenced by that individual's actions and declarations. Generally speaking, in domicile cases an individual's actions are accorded more weight than his declarations since declarations can tend to be deceptive and self-serving. Allan v. Greyhound Lines, 583 P.2d 613, 614 (Utah 1978).

In determining where an individual is domiciled, the fact-finder must look at all the surrounding facts and circumstances. No one fact or circumstance is, by itself, determinative. Rather, the decision-maker must analyze all the relevant facts and determine whether, taken as a whole, those facts point in favor of some particular place as the person's domicile. Since a person's domicile, once established, is presumed to continue until legally changed, the burden of proof is always on the party asserting a change in domicile to show that a new domicile was, in fact, created. State of Texas v. State of Florida, 306 U.S. 398, 427, 59 S.Ct. 563, 577 (1939). Although not entirely clear, it appears that under Idaho law a change in domicile must be established by a preponderance of the evidence. See Ramsey v. Ramsey, 96 Idaho 672, 535 P.2d 53 (1975).

A person's domicile will normally be that place where they have their true, fixed and permanent home. The term "home" as used in the Restatement, Conflicts of Law 2d, means "the place where a person dwells and which is the center of his domestic, social and civil life." Rest., Conflicts of Laws 2d, § 12. The Restatement continues its domicile explanation saying that "[d]omicil is a place, usually a person's home, to which the rules of Conflict of Laws sometimes accord determinative significance because of the person's identification with that place." Rest.,

Conflicts of Laws 2d, § 11(1). The comments to this section of the Restatement emphasize that a person's domicile is usually that person's home.

“A person's domicile is usually the place where he has his home. But some persons have no home in the ordinary sense while others have two or more. Certain persons also lack capacity to acquire a domicile of choice, and in such instances the law may assign them as their domicile a place where their home is not located. (See §§ 22-23). The rule applicable to a person who has two or more dwelling places is stated in § 20.

Rest., Conflicts of Laws 2d, § 11(1), comment 1a.

It is not uncommon for the person whose domicile is at issue to have two or more homes or residences, any of which might be considered his principal home or domicile. The Restatement, Conflict of Laws 2d, provides a very useful discussion of domicile of choice where an individual has more than one residence. Section 20 of the Restatement provides as follows: “When a person with capacity to acquire a domicile of choice has more than one dwelling place, his domicile is in the earlier dwelling place unless the second dwelling place is his principal home.” The comments to that section of the Restatement also provide some helpful guidance in those cases where the person has two dwelling places, either one of which could conceivably be his principal home. For instance, comment b provides in part as follows:

*b.* If a person has two dwelling places, any one of the following situations may arise:

1. One dwelling place may be a home in the sense used in this Restatement (see § 12), and the other merely a residence. This is the most common situation of all. It is likely to exist whenever a person has one dwelling place where he lives during the major portion of each year and another which he uses only for weekend and vacation purposes. Here his domicile will be at the dwelling place which is his home.
2. Both dwelling places may be homes in the sense used in this Restatement, but one may be the person's principal home. In this case his domicile is at the principal home. As between two homes, a person's principal home is that to which he is more closely

related or, stated in other words, that which is more nearly the center of his domestic, social and civil life. This will normally be the home where he and his family spend the greater part of their time. Also significant are such factors as which home is the more spacious, which contains the bulk of the household furnishings, in which has he shown more interest, which home has a way of life, (county life, for example, as opposed to city life) more conducive to the person's tastes, and from which home does he engage more actively in social and civic affairs, as by voting, holding public office, attending church, belonging to local clubs and the like. The person's own feelings towards the dwelling place are of great importance. His statements in this connection cannot be deemed conclusive, however, since they may have been made to attain some ulterior objective and may not represent his real state of mind (see Special Note following this Section).

. . . .

3. Both dwelling places may have some of the aspects of a home in the sense used in this Restatement and both in more or less equal degree. In this unusual situation, the domicile remains at that one of the two dwelling places which was first established. This is because a domicile, once established, continues until superseded (see § 19), and here there is no basis for preferring the later dwelling place over the earlier one.

Rest., Conflict of Laws 2d, § 20, comment b.

If an individual has more than one home or dwelling that could be considered his primary home, factors that may be considered in determining which dwelling is the individual's true domicile include the following:

1. The nature and use of the home, such as whether it is used as a "vacation home," "second home," or "summer home."
2. Whether the home is owned, rented, or provided free of charge.
3. The size of the home. Generally, as between two or more homes, the larger home is more likely to be considered the individual's principal or primary home.
4. Value of the home. Generally, as between two or more homes, the more valuable home is more likely to be considered the individual's principal or primary home.

5. How much time is spent at each home. Generally, as between two or more homes, the home at which the individual spends the greater amount of time is more likely to be considered that individual's principal or primary home.
6. Which home the individual's spouse or minor children view as their primary home. Generally, as between two or more homes, the home that the individual's spouse or minor children regard as their primary home is more likely to be considered that individual's principal or primary home.
7. At which home the individual keeps his pets, valuable artwork, photo albums, hobby equipment, collectibles, and other "near-and-dear" items. Generally, as between two or more homes, the home where the individual maintains most of his "near-and-dear" items is more likely to be considered that individual's principal or primary home.

Applying these factors to the case at hand, the Tax Commission came to the conclusion that [Redacted] domicile was Idaho. [Redacted] resided in two places: a home he owned in Idaho and a house he rented in Washington. The home in Idaho started with the purchase of a mobile home shortly after he was laid off from [Redacted]. In 1997, after [Redacted] rehired [Redacted], the taxpayers purchased a house in [Redacted], Idaho. Purchasing a house in Idaho does not show the intent of abandoning Idaho.

The house [Redacted] rented in Washington was the house the taxpayers owned prior to moving to Idaho. The taxpayers sold the house to their daughter in 1997, and [Redacted] rented a room from her. While this arrangement may be great for family togetherness, it does not evoke a sense of permanence or an indefinite nature. Even though [Redacted] was living with a daughter and his grandchildren, [Redacted]'s primary home was in Idaho with his wife and three minor children. With [Redacted] being gainfully employed in Idaho and the three minor children enrolled in and attending Idaho schools, [Redacted]'s living arrangements in Washington give the impression that he was in Washington for employment reasons only.

The taxpayers stated [Redacted]'s "near and dear" items were his three daughters and eight grandchildren in Washington. They also stated his home furnishings in Washington were items near and dear. From the record, this is essentially all [Redacted] had in Washington. In Idaho [Redacted] had a wife, three minor children, and elderly parents. In addition, all the furnishings of a house in Idaho that is substantially larger than the rented room in Washington. There is no record of family pets, recreational vehicles, collectibles, photo albums, etc; however, from the information available, one would assume with his wife, minor children, and a sizeable house in Idaho, [Redacted] had closer near and dear items in Idaho.

The taxpayers stated [Redacted] attends church in Washington and holds a teaching position in the congregation. This is also true for the church [Redacted] attends when he is in Idaho. The taxpayers stated [Redacted] spends 85% of his time in Washington and 15% of his time in Idaho. They stated that [Redacted] comes to Idaho every other week. Considering this statement, it appears [Redacted] spends half his time attending church in Washington and the other half in Idaho. Additionally, the taxpayers provided information to the Bureau that their church records are maintained in Idaho and that their contributions were given to the church in Idaho.

The taxpayers stated [Redacted] has a bank account in Washington and paid all his bills from that account. They stated all [Redacted] financial records are kept in Washington and that virtually all his personal business, legal and medical matters are conducted in Washington. [Redacted] is also a registered voter in Washington.

Conversely, the Bureau found that the taxpayers have Idaho bank accounts; financial records in Idaho; bill paying out of the Idaho accounts; little or no personal matters needed for [Redacted]; Idaho insurance agents; vehicles registered in Idaho, not Washington; Idaho driver's



licenses for both taxpayers; and the homeowner's exemption claimed on their house in Idaho. Additionally, when asked about where he planned to retire, [Redacted] responded he would return to Idaho.

Considering all the facts and circumstances presented, the Tax Commission found that the actions of [Redacted] indicate that he has not abandoned Idaho as his state of domicile. The Tax Commission found [Redacted] connections to Idaho were stronger and more fixed. His primary purpose or reason for being in Washington was for employment.

### **TRAVEL AWAY FROM HOME EXPENSES**

The taxpayers claimed away from home expenses as an itemized deduction on their schedules A for 2000 and 2001. The expenses were travel costs [Redacted] incurred to drive from Washington to Idaho and back. The taxpayers stated [Redacted] was opening a site in [Redacted], Utah, and the company determined it would be of benefit to [Redacted] if he were allowed to service the site. The taxpayers stated they only claimed the trips when [Redacted] worked at least eight hours for [Redacted].

The Bureau disallowed these expenses for the reason that the primary purpose of the travel was to see his family in Idaho. The Bureau stated that for the expenses to be deductible, the job, not the taxpayer's lifestyle, must require the travel expenses. It must be shown that the expenses were incurred as a result of business necessity, not personal convenience.

The record states that [Redacted] was employed as a computer specialist by [Redacted] in the [Redacted] area. During the years in question, [Redacted] was opening a site in [Redacted], Utah. Mr. [Redacted] traveled to [Redacted], Idaho and apparently did work for the [Redacted] site on a laptop computer from his home in [Redacted]. The record does not contain anything that shows or states that [Redacted] was ever at the [Redacted] site.

Treasury Regulation section 1.162-2 provides that,

**(a)** Traveling expenses include travel fares, meals and lodging, and expenses incident to travel such as expenses for sample rooms, telephone and telegraph, public stenographers, etc. Only such traveling expenses as are reasonable and necessary in the conduct of the taxpayer's business and directly attributable to it may be deducted. If the trip is undertaken for other than business purposes, the travel fares and expenses incident to travel are personal expenses and the meals and lodging are living expenses. If the trip is solely on business, the reasonable and necessary traveling expenses, including travel fares, meals and lodging, and expenses incident to travel, are business expenses. For the allowance of traveling expenses as deductions in determining adjusted gross income, see section 62(2)(B) and the regulations thereunder.

**(b)**

*(1)* If a taxpayer travels to a destination and while at such destination engages in both business and personal activities, traveling expenses to and from such destination are deductible only if the trip is related primarily to the taxpayer's trade or business. If the trip is primarily personal in nature, the traveling expenses to and from the destination are not deductible even though the taxpayer engages in business activities while at such destination. However, expenses while at the destination which are properly allocable to the taxpayer's trade or business are deductible even though the traveling expenses to and from the destination are not deductible.

*(2)* Whether a trip is related primarily to the taxpayer's trade or business or is primarily personal in nature depends on the facts and circumstances in each case. The amount of time during the period of the trip which is spent on personal activity compared to the amount of time spent on activities directly relating to the taxpayer's trade or business is an important factor in determining whether the trip is primarily personal. If, for example, a taxpayer spends one week while at a destination on activities which are directly related to his trade or business and subsequently spends an additional five weeks for vacation or other personal activities, the trip will be considered primarily personal in nature in the absence of a clear showing to the contrary.

The travel [Redacted] claimed as business travel was all to [Redacted], Idaho. The taxpayers stated only the travel expenses (mileage) incurred where [Redacted] worked at least eight hours for [Redacted] were included as an expense. The taxpayers stated the work

[Redacted] did while traveling was for the [Redacted] site; however, there is no mention or evidence that Mr. [Redacted] ever visited the [Redacted] site. Mr. [Redacted]'s travel to Idaho appears to be primarily to spend time with his wife and children. Working for [Redacted] while he was at his Idaho home was only incidental to the time he spent with his family.

The Tax Commission found that the travel expenses failed for two reasons. First, the travel was primarily to see his family and second, the travel was not a business necessity. It appeared that whatever [Redacted] did for [Redacted] for the [Redacted] site could have just as easily been done while [Redacted] was in Washington. Working at his home in [Redacted] was not for the convenience of his employer. Therefore, the Tax Commission upholds the adjustment for the travel away from home expenses.

WHEREFORE, the Notice of Deficiency Determination dated April 11, 2003, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax and interest:

| <u>YEAR</u> | <u>TAX</u> | <u>INTEREST</u> | <u>TOTAL</u>    |
|-------------|------------|-----------------|-----------------|
| 1999        | \$2,538    | \$ 703          | \$ 3,241        |
| 2000        | 4,053      | 798             | 4,851           |
| 2001        | 3,862      | 463             | <u>4,325</u>    |
|             |            | TOTAL DUE       | <u>\$12,417</u> |

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of taxpayers' right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2004.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this \_\_\_\_ day of \_\_\_\_\_, 2004, served a copy of the within and foregoing DECISION by sending the same by united States mail, postage prepaid, in an envelope addressed to:

[Redacted]

\_\_\_\_\_